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No. 84-1045

IN THE

Supreme Court of the United States

October Term, 1984

MINNESOTA ASSOCIATION OF HEALTH CARE FACILITIES, INC., et al.,

Petitioners,

vs.

MINNESOTA DEPARTMENT OF PUBLIC WELFARE, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS MINNESOTA DEPARTMENT OF PUBLIC WELFARE AND ITS COMMISSIONER

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The respondents Minnesota Department of Public Welfare and its Commissioner respectfully request that this Court deny the petition for Writ of Certiorari seeking review of the Eighth Circuit's opinion in this case. That opinion is reported at 742 F.2d 442 and is reproduced in Appendix B to the petition.

STATEMENT OF THE CASE

Petitioners Minnesota Association of Health Care Facilities, Inc. and the named nursing homes (collectively, "MAHCF") have challenged Minn. Stat. § 256B.48, subd. 1(a) as violative of the due process, equal protection and contract clauses to the United States Constitution. The challenged provision of section 256B.48, subd. 1(a) requires nursing homes that elect to continue participation in the Medicaid program to charge their private patients rates equal to those received from the Minnesota Department of Public Welfare ("DPW") for their Medicaid recipients. Accordingly, the law has been called the "equalization statute." If a nursing home chooses not to participate in the Medicaid program, equalization of rates is not required.

The equalization statute was found by the lower courts to serve numerous salutary, legitimate state purposes. *See, e.g., Minnesota Association of Health Care Facilities, Inc. v. Minnesota Department of Public Welfare*, 742 F.2d 442, 448 (8th Cir. 1984) (Appendix B). The lower courts found that the equalization statute: (1) reduces discrimination against Medicaid recipients in gaining entry to nursing homes by eliminating the incentive to discriminate; (2) alleviates the stigma attached to receiving welfare benefits; (3) permits private pay residents to stretch their savings farther and thus stay off of welfare; (4) promotes the fundamental notion of fairness that one should pay equal rates for the same services; and (5) eases the resentment of Medicaid recipients by residents who do not receive medical assistance. *Id. See also* Findings of Fact of Magistrate ("Findings of Fact") III.B.2. at 15-16 (Appendix G-11).

The rate of Medicaid reimbursement for each participating nursing home is determined in accordance with a formula established by rule. Minn. Rules Ch. 9510 (1983) (formerly 12 MCAR § 2.049). Changes in the rate-setting rule are subject to review by the United States Department of Health and Human Services ("HHS") for compliance with federal law. Indeed, the Minnesota rate-setting rule at issue in this case has been approved by HHS. The federal approval of the rate-setting mechanism of the State of Minnesota has not been appealed by petitioners.

REASONS FOR NOT GRANTING REVIEW

Petitioners assert three constitutional claims. First, MAHCF alleges that the equalization statute violates substantive due process and, in conjunction with Minnesota's Medicaid reimbursement system, works a taking in violation of due process. Second, MAHCF claims that the equalization statute treats nursing homes differently from similarly situated providers in violation of equal protection. Finally, MAHCF contends that the equalization statute impairs nursing homes' agreements with private pay patients in violation of the contract clause.

Review of these claims by this Court is unwarranted. Petitioners do not claim that the decision of the Court of Appeals for the Eighth Circuit is in conflict with the decision of another federal court of appeals or the decision of a state court of last resort. Petitioners do not claim that the conduct and decision of the Eighth Circuit warrant the exercise of this Court's power of supervision. Petitioners do not contend that the Eighth Circuit decided a federal question so as to conflict with applicable decisions of this Court. Nor have petitioners

been able to identify any important question of federal law which has not been, but should be, decided by this Court. Thus, none of the usual grounds for review by this Court are present here. Indeed, there are affirmative reasons why granting the petition would be inappropriate.

Petitioners concede that "the Equalization Statute is unique." Petition for Certiorari, p. 7. Petitioners correctly note that "no other state has enacted a statute similar to Minnesota's Equalization Statute." *Id.* at 22. Accordingly, there are no national implications to this case. In short, this litigation presents no issues of sufficient import or breadth to warrant this Court's review.

Moreover, the decision below depends largely on the particular facts of this case. Petitioners themselves argue that the Eighth Circuit "determine[d] that *under the facts of this case* there are no violations of the due process, equal protection and impairment of contract provisions in the Fourteenth Amendment to the United States Constitution." Petition for Certiorari, p. 14 (emphasis added). MAHCF consistently cites "significant factual differences" between relevant case law and this case and refers to what the "evidence shows" or "evidence indicates." *See, e.g.*, Petition for Certiorari, pp. 26, 28, 33. It is unnecessary for this Court to grant the petition merely to review factual findings made after a lengthy trial to the Magistrate and affirmed by both the District Court Judge (the Honorable Edward J. Devitt) and the Court of Appeals for the Eighth Circuit. Nor is review warranted where the decision is so intertwined with these factual findings.

In reality, MAHCF seeks to justify this Court's review simply on the ground that the Court of Appeals incorrectly decided the case. Even if that were sufficient reason to grant review, petitioners are wrong. Given the unanimous agree-

ment among the lower courts in this case, it is not surprising that the decision of the Court of Appeals is amply supported by the law and the facts.

As to their substantive due process claim, petitioners concede that the Eighth Circuit applied the proper standard. This standard requires merely a rational relationship to a legitimate governmental purpose. *Nebbia v. New York*, 291 U.S. 502 (1934). *See also Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124-25 (1978); *Ferguson v. Skrupa*, 372 U.S. 726, 731 (1963). MAHCF, however, attempts to obtain this Court's review by seeking merely to distinguish *Nebbia v. New York*. Distinguishing this Court's authority does not warrant review by this Court. Moreover, whether or not the facts of the *Nebbia* decision are distinguishable, the Eighth Circuit applied the due process standard of *Nebbia* properly. The legitimate state purposes reasonably furthered by the equalization statute were expressly stated by the Eighth Circuit. *Minnesota Association of Health Care Facilities, Inc. v. Minnesota Department of Public Welfare*, 742 F.2d 442, 448 (8th Cir. 1984) (Appendix B-9). Finally, in light of these legitimate purposes, to construe the equalization statute as an impermissible exercise of state police power would seriously restrict the ability of the states to protect the health and welfare of their citizenry. The Eighth Circuit correctly denied petitioners' substantive due process claim.

MAHCF's due process taking argument was also properly rejected by the lower courts. The Court of Appeals concluded that a forced taking of property could not occur because nursing homes voluntarily subject themselves to the limitations of the equalization statute through their voluntary participation in the Medicaid program. The Court of Appeals merely applied the well-established distinction between temptation and coer-

cion. *Cf. Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981); *King v. Smith*, 392 U.S. 309, 333 n.34 (1968); *Steward Machine Co. v. Davis*, 301 U.S. 548, 590-91 (1937). In addition, the only other court of appeals to consider a similar issue reached the same result. *Geriatrics, Inc. v. Harris*, 640 F.2d 262, 265 (10th Cir.), *cert. denied*, 454 U.S. 832 (1981). This Court denied certiorari in that case and it should act similarly in the present action.

Although the Eighth Circuit concluded that, because of the voluntary nature of the Minnesota regulation, it was unnecessary to employ the adequacy standards applicable to state regulation of public utility rates, those standards are easily met by the record before the Court. 742 F.2d at 446 (Appendix B-6). MAHCF argues that the standard for public utilities established by this Court in *Bluefield Waterworks and Improvement Co. v. Public Service Commission*, 262 U.S. 679, 690 (1923) applies here. Under that standard, a public utility must show that the rate it receives does not "permit it to earn a return . . . equal to that generally made at the same time and in the same general part of the country on investments and other business undertakings which are attended by corresponding risks and uncertainties." *Id.* MAHCF did not submit any evidence that the rate of return in the Minnesota nursing home industry does not correspond to similar investments in the same general part of the country which are attended by corresponding risks and uncertainties. Findings of Fact III.A.4.a. at 8-9 (Appendix G-7). Indeed, petitioner's own exhibit states that "there has been sufficient return to attract and retain investments in the [Minnesota nursing home industry]." MAHCF Ex. 14.

MAHCF, however, relies upon the discredited Minnesota Systems Research, Inc. ("MSRI") study and testimony of

Richard Kahan to establish lack of profitability in Minnesota nursing homes and therefore a due process violation. Dr. Barry Griffin, who prepared the MSRI study, testified that the MSRI study did not measure profitability. Testimony of Griffin, pp. 5-7, 14, 16, 30, 52, 57, 60. Mr. Kahan candidly admitted that he did not examine profitability and, after reviewing the MSRI study, concurred in Dr. Griffin's testimony. Testimony of Kahan, pp. 129, 211. The trial court's finding that the MSRI study is "misleading" was amply founded. Findings of Fact III.A.4.c.v. at 9 (Appendix G-7-8).

The evidence submitted by the State and adopted by the trial court establishes the absence of any due process taking. The statistical study performed by the national accounting firm of Deloitte Haskins & Sells establishes that for-profit nursing homes in Minnesota make substantial profits and secure a substantial return on their investments. Findings of Fact III.A.7. at 12-13 (Appendix G-9-10). Contrary to petitioners' complaints regarding profits from the sales of nursing homes,[1] the trial court found that "[s]ignificant long-term gains were achieved" and, citing the Deloitte study, that the average gain on the sale of a nursing home was $747,071. Findings of Fact III.A.8. at 13-14 (Appendix G-10). Myriad other facts support the trial court's finding that a Minnesota nursing home "is a viable business enterprise." Findings of Fact III.A.4.e. at 10-11 (Appendix G-8-9). In short, even if the Court of Appeals incorrectly refused to apply due process analysis because of the voluntary nature of the equalization statute regulation, the record amply supports the trial court's finding that no due process violation exists on these facts.

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[1] Petition for Certiorari, p. 30.

MAHCF's equal protection claim also does not merit this Court's review. The Court of Appeals appropriately selected the rational basis test as the applicable standard of review, noted the legitimate state interests furthered by the equalization statute and, as to the classifications resulting from the statute, concluded that the Minnesota Legislature "could rationally have believed that the problems arising from rate discrepancies were most serious in nursing homes that participate in Medicaid, and that it was not necessary or desirable to regulate the rates of other nursing homes or to impose a similar equalization requirement on other health care providers who participate in Medicaid." 742 F.2d at 448 (Appendix B-10). The treatment of the equal protection claim by the Court of Appeals is soundly grounded in this Court's precedent. *See, e.g., Exxon Corp. v. Eagerton,* —— U.S. ——, 103 S. Ct. 2296, 2308 (1983); *City of New Orleans v. Dukes,* 427 U.S. 297 (1976); *Williamson v. Lee Optical,* 348 U.S. 43, 49 (1955). The decision of the Eighth Circuit is also firmly based on the record. *See, e.g.,* Findings of Fact III.B.4. and 5. at 16-17 (Appendix G-11-12) and testimony of Robert Rau, V. XI, pp. 186-87.

Finally, the Court of Appeals properly rejected MAHCF's argument that the equalization statute impermissibly impaired contracts between nursing homes and their residents. The Court of Appeals applied the appropriate contract clause test. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.,* 459 U.S. 400 (1983); *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234 (1978); *United States Trust Co. v. New Jersey,* 431 U.S. 1 (1977). Applying this test, the Court of Appeals concluded that not only did the equalization statute not substantially impair contractual relationships, but even if a substantial impairment existed, the State's interest in controlling rates

charged by nursing homes provided a legitimate public purpose justifying the impairment. 742 F.2d at 450-51 (Appendix B-14). The Court of Appeals concluded:

> [T]he equalization statute truly deals with an important general social problem and serves to protect a basic interest of society. Finally, particularly in view of the gradual implementation of the rate limitation, we cannot say that the adjustment of contract rights effected by the statute involves unreasonable conditions or is inappropriate to the public purpose it serves.

Id. at 451 (Appendix B-15). In response to the amply-supported decision of the Court of Appeals, petitioners can refer only to a recent *antitrust* decision of another court of appeals. Clearly, the Eighth Circuit's reasoned treatment of the contract clause issue regarding the equalization statute should not be reviewed by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari filed by petitioners MAHCF and the individual nursing homes should be denied.

Respectfully submitted,

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